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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

JOHN E. PARKS, JR., AND ROBERT M. FOOTE AND ALBERT McHUGH AND PAUL ZIEGLER AND SILVIO STAMERRO, INDIVIDUALLY AND AS REPRESENTATIVES OF THE MEMBERS OF LOCAL 28, IBEW, IN A CLASS ACTION AND LOCAL UNION 28, IBEW,

Petitioners,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND LOCAL UNION NO. 24 (IBEW),

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR LOCAL UNION NO. 24 (IBEW) IN OPPOSITION

GEORGE COCHRAN DOUB,
10 Light Street,
20th floor,
Baltimore 2, Md.,
Attorney for Local Union No. 24 (IBEW).

Of Counsel:
WEINBERG AND GREEN.

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OPINIONS BELOW

The opinion of the United States District Court for the District of Maryland (R. 1-46) is reported at 203 F. Supp. 288.

The opinion of the Court of Appeals for the Fourth Circuit (Pet. App. 1-78) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 23, 1963. The petition for writ of certiorari was filed on March 1, 1963. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE SALIENT FACTS[1]

Local Union 28 and certain of its members instituted suits against its parent organization, the International Brotherhood of Electrical Workers (hereinafter referred to as the IBEW) to invalidate the revocation of its charter by the IBEW. The revocation action had been taken after (a) Local 28 went out on strike without obtaining the sanction of the IBEW International President (IP) as required by the IBEW Constitution and (b) refusal of the members of Local 28 over a six weeks period to return to work and end the strike in defiance of the repeated directions of the IP to do so.

The Constitution of the IBEW, which was binding upon every Local and every member of the Union, provided that no Local could cause or allow a work stoppage or a strike without the consent of the IP (XVII, 13; Pet. App. 8). The IP was empowered by the Constitution to decide disputes and questions in controversy however arising, provided that his decisions were subject to appeal to the IEC and then to the International Convention (IV, 3(2); Pet. App. 8). The IP was also empowered by the Constitution to suspend or revoke the charter of any Local which failed or refused to observe the laws and rules of the IBEW (IV, 3(8); Pet. App. 8).

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[1] This statement attempts to recite only the critical facts. The opinion of the Fourth Circuit contains a more detailed review of the facts.

Local 28 voted on June 13, 1961 to strike on June 16 at 4:00 P.M. against the Maryland Chapter of the National Electrical Contractors Association (NECA). When later informed of the vote by telegram, the IP replied by telegram on June 15 refusing his strike sanction; his refusal was received by the Local before the strike had begun.[2] Nevertheless Local 28 went out on strike as scheduled. At a meeting of the Local on June 22, at the insistence of the IP, his telegram was read and, in accordance with the recommendation of the Local's officials, the Local voted to continue the strike (Jt. App. 283-284; 647-648; 26-27; 691-692). The local did not advise the IP of this vote until he asked to be informed (Jt. App. 797). The Local took no appeal to the IEC from the IP's refusal to sanction the strike.

On June 23 the IP was advised that the members of the Local had refused to discontinue the strike in spite of his disapproval. The IP sent a representative to Baltimore to discuss the problem, investigate and report (Jt. App. 289-290). On July 7 the IP, in a communication to officials of the Local, characterized its action as a challenge to the authority of the International and the IBEW Constitution (Jt. App. 722). On the same day he sent each member of the Local a notice of a hearing before a referee on July 7 to show cause why the Local's charter should not be revoked for engaging in a strike in violation of the IBEW Constitution (Jt. App. 731-734; 927). On July 14 the IP wrote each member a second time, explaining the effect of the charter revocation and enclosing a copy of the IBEW Constitution (Jt. App. 735-737).

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[2] The IP refused to sanction the strike because he deemed Local 28's demands were excessive. The Fourth Circuit held that his refusal was not a breach of his fiduciary duty (Pet. App. 35).

At a four day hearing before the referee pursuant to notice, the referee took extensive evidence (Jt. App. 737) and thereafter submitted his findings of fact (Jt. App. 751-755). The referee found the facts to be "crystal clear" that Local 28 had called the strike without making any attempt to obtain the approval of the IP and had continued it in disregard of his constitutional authority[3] (Jt. App. 35).

On July 28 the IP heard extensive arguments of counsel for Local 28 (Jt. App. 755-756). Near the end of the arguments for the first time counsel for Local 28 questioned the good faith and impartiality of the IP in bringing the charges; they did not move to have the case transferred to the IEC on this ground. On August 1 the IP filed his decision and order and sent a third letter to each member of the Local enclosing his decision and explaining it at length (Jt. App. 757-765). He ordered the revocation of the charter of Local 28 unless by August 7 (a) each of its members reaffirmed his oath as a member of IBEW, (b) the Local terminated its unauthorized strike, (c) the Local submitted the issues in dispute between Local 28 and the employers to the Council on Industrial Relations (a joint IBEW-NECA bargaining agency) for binding decision, provided the Local need not accept the usual Council clause[4], and (d) the officers of Local 28 notified the IP of the action taken.

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[3] The District Court found the referee to be "a fair and impartial man" (Jt. App. 35).

[4] Most collective bargaining agreements between IBEW locals and NECA chapters contained some form of Council clause. The clauses generally required submission to the Council for decision of all disputes arising during the term of the agreement and proposed changes at the end of any contract year when they were in dispute (Pet. App. 11). Most Council clauses provided that the agreement was to run from year to year unless changed as provided in the agreement. Such agreements were termed "evergreen", namely, terminable only upon mutual consent of the parties or permission of the Council. The Dis-

On August 5, in spite of the IP's directive, the members of the Local voted overwhelmingly to support their officers in continued defiance of the IP's orders, to refuse to accept his reasonable alternative requirements and to continue the strike. Instead the Local filed an appeal to the IEC from this decision of the IP and then took the lengthy depositions of a number of witnesses, including that of the IP.

On September 12 the IEC heard extensive arguments of counsel for Local 28 on its appeal and its counsel were permitted to read from the depositions of the IP and other witnesses and to challenge the good faith and impartiality of the IP as well as the members of the IEC. Although deemed an appeal by the Constitution, the IEC permitted counsel for Local 28 to treat the proceeding as a hearing *de novo* (Jt. App. 30, n. 30). The IEC accorded Local 28 this hearing although the Local had refused to comply with the decision of the IP pending the appeal as required by the Constitution as a condition of such appeal (IV, 3(2), XXVII, Jt. App. 16).

On September 30, 1961, the IEC decided the case not only on the basis of the record before the IP but also on the facts submitted in the interim depositions, including those relating to the IP's impartiality, extensive oral argument and written briefs (Jt. App. 764-795). The IEC affirmed the order of the IP revoking the charter of Local 28 in an extensive opinion[3] (Jt. App. 795-804). Its findings included:

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trict Court held that the validity of the Council clause in this case was not involved (Jt. App. 39). The Fourth Circuit held that it was not called upon to determine under what circumstances a perpetual agreement between a union and an employer may or may not be enforceable (Pet. App. 46).

[3] The District Court found that the IEC was not biased and not prejudiced against Local 28 (Pet. App. 33, 49).

"The International President acted with remarkable restraint and patience. He advised . . . He met . . . His every efforts were rebuffed.

* * *

"That the International President conducted himself properly is beyond question. . . . Not once, during these entire procedures did the Local Union indicate a willingness to comply with the laws of this organization. The International President, even in his decision and order . . . extended a final offer to forestall the revocation of its Charter. Local 28 chose to ignore the offer.

* * *

"All that was presented by Local 28 to the International President, all that has been presented by Local 28 to this Council on appeal, is that it be permitted to conduct its affairs outside of the restrictive provisions of the laws of the International Union. That it cannot do" (Jt. App. 803).

After Local 28 determined to go its own way without reference to the Constitution and laws of the IBEW, the IBEW proceeded to lay the ground work for the formation of a new Local and on August 27 assisted in the chartering of this Respondent, Local 24, and has thereafter aided it. On March 30, 1962, Local 24 had some 1300 members, a number which equals or exceeds the membership of Local 28. In contrast to Local 28 which has been a closed union, Local 24 is an open union which has accepted all applications for membership by qualified electricians in the Baltimore area, including some hundreds of transferee members from Local 28 (Pet. App. 29).

In spite of the District Court's findings that (1) the IP owed a duty to the Union as a whole and he could not properly grant permission to engage in a strike which he felt would be contrary to the best interests of the IBEW

(Jt. App. 38), (2) the IP acted "to maintain necessary union discipline" (Pet. App. 34), and (3) the IP was not moved by express or particular malice, ill-will or bias, the District Court held the IP did act wilfully and intentionally for the purpose of imposing severe discipline on the members of Local 28 and in that sense "his action amounted to legal malice". The District Court concluded that, since counsel for Local 28 had challenged the good faith of the IP and his motives in refusing consent to the strike, he had been disqualified from hearing the case and was not "an unbiased and disinterested tribunal" (Jt. App. 35). Yet Local 28 had not appealed to the IEC from the IP's refusal to sanction the strike. The Court further held that "the fatal defect in the procedure" was not corrected by the review of the IP's decision by the IEC (Jt. App. 36). In invalidating the proceedings upon the grounds stated, the Court disregarded the organizational procedures of the IBEW Constitution.

After finding that the IP had no actual malice toward Local 28, the Court said: "But he did act wilfully and intentionally for the purpose *inter alia* of imposing severe discipline on the members of Local 28 and without due regard for the duty he owed to them, as well as to the IBEW as a whole. In that sense his action amounted to legal malice" (Jt. App. 38-39).

In detecting a procedural defect in the hearing accorded Local 28 by the IP, i.e., the hearing was not a fair one because the IP should have disqualified himself, not by reason of actual bias against Local 28, but by reason of his "legal malice", (a concept so abstruse that a layman officer of a labor organization could not reasonably be expected to identify it and act upon it) the District Court applied a subjective "mixed motives" test to disqualify the IP which, if accepted, could disqualify any judicial, quasi-

judicial, administrative or organizational officer because each of them necessarily acts "wilfully and intentionally" in making a decision. The vice of the test was that it depended upon the decision pronounced. The Fourth Circuit was correct in rejecting it.

The District Court did not accord IBEW any opportunity to correct the alleged procedural defect. After finding the hearing procedure defective, the District Court enjoined the IBEW from holding any new hearing with respect to its charges against Local 28.[6]

The District Court further held that the new Local 24 was dominated by IBEW and directed the revocation of its charter, although upon the revocation by IBEW of the charter of Local 28, it was natural for the loyalist members of the Union, who wished to retain their membership in the IBEW, to seek continued membership by forming a new IBEW local union. This they did with the cooperation and assistance of IBEW. In doing so, they exercised a federal right guaranteed by Section 7 of the National Labor

[6] This novel determination struck a crippling blow to the autonomy and self-government of the IBEW and other national and international labor organizations. It exceeded the Court's authority and violated fundamental principles of judicial review of administrative and organizational proceedings.

Instead of reversing the revocation order, if deemed defective, without prejudice to further proceedings by IBEW in consonance with the opinion, as required by established state and federal governing review of administrative and organizational proceedings, the District Court proceeded to determine itself whether the charter of Local 28 should be revoked and concluded, without applying any legal standards except the length of the chancellor's judgment, that revocation was too severe a sanction. In thus functioning as the ultimate review agency of IBEW, and making its own findings with respect to the dispute between Local 24 and the IBEW, the District Court set aside the autonomous self-governing processes of the IBEW. As the amicus brief of AFL-CIO in the Fourth Circuit pointed out, such a decision had serious implications for the independence of trade union organizations.

Relations Act. The IBEW also had a recognized federal right to form, or participate in the formation, of its locals. *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 234.

Although Local 24 and its members had not been made parties in this litigation by court order or otherwise, the District Court's order prejudiced substantial rights of Local 24 and all of its members. Without any hearing being accorded by the District Court to Local 24 and its members, the Court adjudicated their valuable and beneficial rights in their absence. It was a denial of civil liberties for a court to destroy a union and the rights of its members in their absence.

Upon petition to the Fourth Circuit, Local 24 was made an intervening appellant by court order. If certiorari is granted Local 24 reserves the right to contend that as to it the District Court's order violated due process.

In the elaborate opinion of Chief Judge Sobeloff, the Fourth Circuit reversed the decision below after reviewing the facts in more detail than is possible here[7] and holding that on the facts as established by the District Court's findings there was no procedural defect in the trial before the IP (Pet. App. 49). The Fourth Circuit rejected all of the defenses advanced by the IBEW and Local 24 based upon lack of jurisdiction of the District Court over this intra-union dispute (Pet. App. 54-76). (For a statement of these jurisdictional defenses see pages 10-11 of this brief.)

[7] For instance, this brief does not attempt to deal with the complexities of the so-called "evergreen" clause. It is discussed fully in the opinion of the Fourth Circuit (Pet. App. 42-46).

ARGUMENT

I. The Issues Raised by the Petition Violate Supreme Court Rule 23(4).*

Petitioners have failed to present with accuracy, brevity and clearness whatever is essential to a ready and accurate understanding of the points requiring consideration. The questions presented contain numerous assumptions of fact which, as shown in the brief for the IBEW in opposition, are inaccurate. These questions also contain so many subsidiary clauses that the questions are lengthy, obscure and extremely difficult to comprehend. If a petition for certiorari can be deemed to violate Rule 23(4), the issues presented in this petition would appear to do so. For this reason alone the petition should be denied.

II. Almost Every Legal Issue Presented by the Petition Has Been Decided in Favor of Petitioners

Almost every important legal question was resolved by the Fourth Circuit in favor of petitioners so they are not entitled to complain here of the rulings made below in their favor. The Fourth Circuit held with petitioners that:

(1) The Federal Courts had jurisdiction over this suit by a local union against its International because (a) the constitution is a "contract . . . between . . . labor organizations" within Sec. 301(a) of the Taft-Hartley Act (Pet. App. 54-59) and (b) members of a local union, whose charter is revoked by an International, are "disciplined" by such revocation within the meaning of Sec. 101(a)(5) and 609 of the Landrum-Griffin Act (Pet. App. 66-69).

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*Rule 23(4) of the Supreme Court Rules states:
"The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

(2) The Norris-LaGuardia Act[9] did not preclude injunctive relief in a case instituted under Sec. 301(a) of Taft-Hartley and therefore Norris-LaGuardia did not deny the District Court authority to issue an injunction in these proceedings (Pet. App. 60-64).

(3) Although the complaints of petitioners charged in part unfair labor practices, the doctrine of NLRB primary jurisdiction did not require the District Court to defer to the exclusive jurisdiction of the Labor Board as to the other charges of the complaints (Pet. App. 64, 65, 70).

(4) The failure of petitioners to exhaust the reasonable internal remedies available to them did not bar the suits (Pet. App. 74-76).

Each of these important legal questions has been determined favorably to petitioners and accordingly their attempt to have them reviewed here is improper. (See Questions Nos. 8, 9, 10 and 11, Pet. Brief, pp. 4, 5).[10]

The only legal issues which were not resolved below in favor of petitioners were these:

(1) Did the Court below err in holding that the revocation of Local 28's charter and the immediate chartering of new Local 24 for the same jurisdiction did not constitute a trusteeship as defined by Sec. 3(h) of Landrum-Griffin? (Petitioners' Question No. 4). Petitioners reason that the trusteeship provisions of Landrum-Griffin were thus violated and therefore the District Court had jurisdiction over their suits. Since both Courts below held that the District Court had jurisdiction over the suits under both Sec. 301(a) of Taft-Hartley and Sec. 101(a)(5) and

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[9] 29 U.S.C. Sec. 101, et seq.

[10] In the event the petition is granted, Local 24 reserves the right to argue that each of these legal issues was incorrectly decided below.

609 of Landrum-Griffin, the decision as to the trusteeship question is hypothetical and of no importance. Only if the Fourth Circuit had determined that the District Court had no jurisdiction of these suits under Taft-Hartley and under Landrum-Griffin would this question have been pertinent. Furthermore, the decision of the Fourth Circuit that the trusteeship provisions of Landrum-Griffin did not apply was plainly correct for the reasons stated in its opinion (Pet. App. 71-73).

(2) Did the Courts below err in declining to make findings as to charges by petitioners of unfair labor practices on the ground that such charges were within the exclusive primary jurisdiction of the NLRB (Petitioners' Question 5)?[11]

The District Court at the trial admitted in evidence, subject to exception, all testimony proffered by petitioners in their effort to show unfair labor practices and that there was a conspiracy between the IBEW and the employers (NECA). Near the end of the trial the Court indicated that petitioners had offered no evidence of any such collusion or conspiracy, saying, "There has not been the slightest suggestion of that in the evidence" (Jt. App. 315). It is apparent that, if the District Court had made findings as to matters which plainly involved unfair labor practices subject to the exclusive jurisdiction of the NLRB, they would have been adverse to petitioners.

Petitioners may not complain of the failure of the courts below to make findings of fact tantamount to unfair labor practices. In the District Court petitioners did not request such findings in their elaborate "Request for Findings". In

[11] Petitioners charged that the International President made a secret deal with the employers (NECA) and thereby prevented Local 28 from successfully bargaining (Pet. Brief, p. 2, Their Question 5).

the Fourth Circuit they defended the failure of the District Court to make such findings (Pet's. Brief in the Fourth Circuit, pp. 76-77).

III. The Principal Factual Questions Decided Below

(1) Was the refusal of the IP to consent to the strike of Local 28 made in bad faith? The Fourth Circuit and the District Court found as a fact that he acted in good faith in his refusal to authorize it (Jt. App. 35). This finding was amply supported by the record. In addition Local 28 did not appeal his refusal to the IEC.

(2) Was the revocation hearing unfair because allegedly the IP was not impartial and unbiased? The District Court concluded that, in revoking Local 28's charter as he was empowered to do under the IBEW Constitution, the IP had no actual bias against Local 28 but, since he wilfully imposed severe discipline upon the members of Local 28, his action amounted to "legal malice," and therefore he was disqualified in hearing the case. (For a more complete statement of the District Court's findings on this point, see page 7 of this brief.) In its elaborate opinion the Fourth Circuit concluded that "on the facts in this case as established in the Court's findings" there was no procedural defect in the trial before the IP justifying a court of law to interfere with, and to overturn, the action taken" (Jt. App. 49). This finding was clearly correct for the reasons set forth in the opinion of the Fourth Circuit.

IV. The comprehensive opinion of Chief Judge Sobeloff on behalf of the Fourth Circuit has disposed of the issues in this case and there is no need for further review by this Court.

No constitutional question has been raised by petitioners and they are unable to contend that the decision of the

Fourth Circuit is in conflict with any decision of this Court or of any other Circuit. Nor has any substantial and important question of federal law been decided adversely to petitioners.

Petitioners' abstruse contentions are clearly without merit. The principal factual issue below was whether the IP was biased and therefore disqualified from hearing the charges that Local 28 had violated the Constitution of the International. This was an issue of fact which has been correctly resolved by the Fourth Circuit against petitioners upon the basis of the findings of fact of the District Court.

This case turns solely upon an analysis of its particular facts and this Court does not grant certiorari "to review evidence and discuss specific facts". *United States v. Johnston*, 268 U.S. 220, 227; *Southern Power Co. v. North Carolina Public Service Co.*, 263 U.S. 508; *Houston Oil Co. v. Goodrich*, 245 U.S. 440. The facts themselves are so unique and episodic, they have never risen before and are unlikely to arise again.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be denied.

GEORGE COCHRAN DOUB,
Attorney for Local Union
No. 24 (IBEW).

Of Counsel:
WEINBERG AND GREEN.

March 1963.